

OFFICIAL GAZETTE



GOVERNMENT OF GOA

GOVERNMENT OF GOA

Raj Bhawan

Order

No. 1-50-89-Fin(Bud.)

Whereas an excess over grants has been reported by the Comptroller and Auditor General of India in his Report for the year 1982-83 in respect of the then Union Territory of Goa, Daman and Diu;

And Whereas the Public Accounts Committee have examined and recommended the authorisation of the said excess over grants in their 44th Report.

Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (2) of section 32 of the Goa, Daman and Diu Reorganisation Act, 1987 (Central Act 18 of 1987), I, Khurshed Alam Khan, Governor of Goa, hereby declare that the excess over grants for the year 1982-83 in respect of the then Union territory of Goa, Daman and Diu, as shown in the Schedule hereto, hereby stands duly authorised.

SCHEDULE

No. of Demand	Services and purposes	Excess over Grants		
		Revenue	Capital	Total
		Rupees	Rupees	Rupees
1.	Union territory Legislature and Elections (Charged).	3,508	—	3,508
7.	Police and Fire Services.	32,412	—	32,412
8.	Jails.	12,580	—	12,580
11.	Pension.	2,46,904	—	2,46,904
24.	Tourism.	1,208	—	1,208
13.	Roads and Bridges.	—	28,673	28,673
14.	Education, Art and Culture.	—	15,087	15,087
20.	Agriculture and Allied Services.	—	10,226	10,226
Total:		2,96,612	53,986	3,50,598

Khurshed Alam Khan

Governor

Panaji, 5th October, 1989.

Revenue Department

Notification

No. 22/162/88-RD

Whereas by Government Notification No. 22/162/88-RD dated 25-11-1988 published on page 393-394 of Series II,

No. 37 of the Official Gazette, dated 15-12-1988 and in two newspapers (1) Gomantak Times dated 30-11-1988 (2) Sunaprant dated 6-12-1988 it was notified under section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that the land specified in the Schedule appended to the said Notification was likely to be needed for the public purpose viz. Land Acquisition for construction of school building of Government Primary School at Sirlim in Quepem Taluka.

And Whereas, the appropriate Government (hereinafter referred to as "the Government"), after considering the report made under sub-section (2) of section 5A of the said Act is satisfied that the land specified in the Schedule hereto is needed for the public purpose specified above (hereinafter referred to as "the said land").

Now, Therefore, the Government hereby declares, under section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government also appoints, under clause (c) of the said Act, the Deputy Collector & Sub-Divisional Officer, Quepem to perform the functions of a Collector South Goa District, Margao for all proceedings hereinafter to be taken in respect of the said land, and directs him under section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the Office of the said Deputy Collector & Sub-Divisional Officer, Quepem till the award is made under section 11.

SCHEDULE

(Description of the said land)

Taluka: Quepem

Village: Barcem

Survey No. Sub. Div. No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3
95 part	Comunidade of Barcem. North: — South: S. No. 95. East: — West: —	4000.00
		Total: 4000.00

By order and in the name of the Governor of Goa.

P. S. Nadkarni, Under Secretary (Revenue).

Panaji, 28th September, 1989.

Notification

No. 22/143/89-RD

Whereas it appears to the Appropriate Government (hereinafter referred to as "the Government") that the land specified in the Schedule hereto (hereinafter referred to as "the said land") is likely to be needed for public purpose

- ii) Albaro Silva is the retired employee who was holding charge in the absence of Rodrigues.
- iii) Party I, Vishnu L. Phadke was working as radio mechanic.
- iv) One Antonio Cardoz worked as a peon. He is also Party I along with Phadke. However he has not participated in the proceedings any further and as such Vishnu Phadke alone is treated as Party I Workmen, hereinafter referred as workman.

The charge against the workman is about the joint act committed by him in collaboration with the other workman and this act is explained by the workman in Column No. 3 of his claim statement. On 13th July 1974, which was a Saturday both of them Phadke and Cardoz opened the godown during lunch hours. This godown is situated in Cajetan Silva building at Margao. They removed one box of philips tubes lights and one box of philips bulbs; engaged one coolie and Phadke took the boxes to the Electrical goods shop of Barad. Obviously there was no cash-payment and as such there was not question of issuing a cash-memo to Barad. The goods were presumable supplied on credit! However no credit memo is issued to Barad and this is where lies the main controversy! The workman Vishnu Phadke admits in unmistakable terms that at his instance the two boxes were carried to the shop of Barad by placing the head load on the head of the coolie Swamy. Obviously the boxes were taken during lunch hours and there was no question of taking anybody's permission. According to him he acted bonafide and his whole idea was to benefit the employer. The trader Barad has supposed to go to the Margao branch of Cosme Matias on Monday 15th July 1974. Had he made the payment on Monday as scheduled, the matter would have ended there only. However something else was destined to happen. The workman Vishnu Phadke had to suddenly go to Sawantwadi on the very day and so he could not be present in the shop on Monday the 15th July to apprise the "In charge" person about the delivery. The problem could have been solved had Barad gone to the shop on Monday to make the necessary payments (on 15-7-74). However on Monday he had to go to Bombay. He returned on Thursday (18-7-74). However on Thursday he had to again go to Belgaum and from there he returned on Saturday 21-7-74.

As against this, it would be quite interesting to note what the management has to say on this episode. Admittedly neither of the workmen (Vishnu Phadke and Antonio Cardozo) had informed the employer about the delivery of the two boxes to Barad on Saturday 13-7-1974. Nothing happened on Monday 15-7-74. However on 16-7-74 Shri A. Rodrigues who resumed the charge of Margao shop wrote a letter to the Director of Cosme Matias, Margao Branch informing him that a staff member by name Antonio De Cruz informed him that on 13th (Saturday) during lunch time at about 2.10 p. m. he saw the coolie by name Swamy walking with one case of Philips tube lights TL 40 W and one case of Philips lamps and that the radio mechanic Mr. Padke was walking behind him and he saw them going towards the door of M/s. Orient Pvt. Ltd. where the shop of Bharad Electricals is situated. He also saw that the owner of the shop (Bharad) collected the boxes, locked his shop and went away. On getting this information from Antonio Cruz, he i.e. A. Rodrigues verified the things by searching for credit memo or cash memo, which were supposed to be prepared in the name of Bharad Electricals to whom the goods were supplied. On verification from the office record he found that no sale transaction was recorded in the books of the shop.

Hence he thought it wise to contact the coolie named Swamy. After repeated attempts he was able to contact Swamy and to get from him correct information about the happenings of that Saturday. Swamy told him that at about 1.30 p. m. on that day both Mr. Phadke as well as Antonio Cardozo came with keys, opened the godown and asked him to carry immediately the two cases and to deliver them to the destination where Phadke took him. After getting this information from the coolie who was their regular coolie about the Clandestine delivery he i.e. Rodrigues wondered how the two got the keys of the godown and that too during off hours. Shri Rodrigues was on leave on Saturday and Shri A. Silva was in charge of the shop on that Saturday. Hence he felt that the two boxes were removed, without the knowledge of A. Silva and so he thought it fit and proper to apprise the Director about the event which took place under suspicious circumstances.

After the receipt of the letter, the wheels of enquiry started moving and on 17-7-1974, when Vishnu Phadke returned from Sawantwadi to join duties he was put under suspension and he was issued with the charge sheet calling for his explanation. Similar charge sheet was issued to Antonio Cardozo also. Immediately after issuing the charge sheet, the company held a preliminary inquiry where in the statement of both Phadke as well as Cardoz (Peon) was recorded. These two statements made by them and admittedly under their signatures are very important considering the time sequence. Secondly these statements recorded within five days of the event are equally important because these are immediate statements, these are undiluted statements made by them without the intervention of any outside agency. Hence they have High Evidentiary value and I shall now study what these workmen have to say on 17th July about the incident which took place four days earlier i.e. on 13th July.

In his statement, styled as a declaration, V. Phadke states that "At the time of closing the shop (at lunch break) he gave the keys of the shop to Antonio Cardoz while he kept the keys of the godown with him. At about 2 p. m. Antonio Cardoz met him. Both went to the godown with the coolie (Swamy). Antonio opened the godown and put one carton of philips tube lights 40 W and one carton of Philips bulbs 40 W on the head of the coolie Swamy and kept keys with himself for replacing them in the shop at 3 p. m. He then went to deliver the two cases to M/s. Orient Pvt. Ltd. then occupied by Bharad Electricals. Accordingly he delivered the two cases to Bharad Electricals, Bharad received them and in turn closed the shop (and went away). Incidentally this order was earlier placed with Antonio Cardoz. The account was not then settled. He was to go to Bharad on Monday to settle the account. However he could not do so as he had to take urgent leave on 15th and 16th July. He admits that the information of this delivery was not given to Shri A. Silva who was acting for Agnelo Rodrigues (In charge) who was on leave."

A plain reading of this immediate statement shows that he and Antonio Cardozo had taken the keys of the godown (from the drawer where they are usually kept) opened the godown and clandestinely delivered the two cases to Barad who was in all probability hand in glove with them. It had to be noted here pertinently that had not Antonio Cruz seen the whole incident and reported the matter to A. Silva the lifting of the two cases without anybody's knowledge would have gone undetected and the episode would not have come to light at all: probably, however this was not to happen and both Vishnu Phadke as well as Antonio Cardoz had to face the inquiry after the charge sheets were served on them and their explanation were obtained.

Thereafter Shri Rao the then personnel officer was appointed inquiry officer, who conducted the enquiry immediately on 26-7-74. Besides the two workmen Barad was also examined before him, Barad stated before him that "On Tuesday/Wednesday he had placed the order orally. On Saturday he asked (orally) Antao to supply the goods urgently. Thereafter Mr. Phadke came and delivered the cases. He promised to make the payments on Monday (15-7-74).

With this evidence for Party I and with the evidence of the management, Shri Rao came to a conclusion that both Phadke and Cardoz had surreptitiously opened the godown and had removed the two cases without the knowledge of the employer and this amounted to dishonesty, unfaithfulness, untrust, worthiness etc. Accepting the above report the management took a decision to dismiss both the workman from service. The letter of termination Exb. W-2 dated 1st August, 1974 gives detailed reasons and how reliance was placed on the finding of the inquiry officer. Consequently Vishnu Phadke with whom we are mainly concerned in this Government reference was dismissed from service w.e.f. 5th August, 1974. This order is the subject matter of the reference and I have to see whether the order of the management is just and proper in the circumstances of the case.

In view of the reference to the domestic inquiry in the Written Statement my predecessor framed the preliminary issue about the same. However I find from the record that the management has informed the Court in writing on 6th August, 1980 that "The inquiry and findings suffer from infirmity and it did not want to rely on them." So stating

they sought to prove their case by leading evidence as if there was no inquiry. Acting on this, my predecessor by order dated 23-8-1980 held that the inquiry was vitiated. He thereby meant to hold that there was no necessity of recording a finding on preliminary issue and that the matter was to be heard on merits. A cursory analysis of the inquiry papers produced by witness Rao in his evidence recorded on 24-1-1978 shows that the proper procedure was not followed by him. Further I find that the Written Statement dated 29th June 1976 is signed and verified by him on behalf of the management in his capacity as a personnel officer. This shows that all along he was participating in the matter of Industrial dispute on behalf of the management raising serious doubts about his credibility and Impartiality and Impartiality. Hence it appears that issue regarding domestic inquiry was rightly dropped. However while considering the legality or otherwise of the order of termination, I propose to consider the evidence recorded before him just within ten days of the incident to find out whether the workmen and his witness have conveniently changed their story before the Court after a lapse of three years. The workman Vishnu Phadke is examined on 27th June, 1977 while his star witness Surendra Barad is examined on 1-7-1977. It has to be noted here pertinently that so far the story was that an oral order was placed with Antonio Cardozo a couple of days before that "eventful Saturday". However in the evidence of Phadke and Barad a new story of "Indent in writing" or in other words placement, of an order in writing has emerged. I find from the record that the witness Barad has produced and proved his written order dated 13-7-1974 and the same is admitted into evidence as Exb. W-5. It is rather confusing that the original order is not produced. It cannot be said that the original order is misplaced or has got mixed up with other documents because what is produced by way of evidence is the photostat copy of the original. In that case the original must be with either Board or Phadke. Why should they feel shy of producing the original? We find an answer to this if we study the glaring contradictions in the statements made in July, 1974 and in the depositions in Court made in July, 1977 well after three years. By then much water had flown below the bridge. There is reason to believe that when the incident was fresh and when the workman Phadke and witness Barad were caught almost redhanded with their back behind the wall, they made a clean breast of every thing, but inventing a story of oral order: Under the trade customs placement of big oral order for big consignments is irreconcilable. Hence, either a cash memo or a credit memo was necessary. Further to execute such a big order the placement of a written order was necessary. Hence in order to come out of this, a written order named and styled as Indent is produced at the trial. Obviously there are glaring discrepancies and contradictions about what was said in July, 1974 and what is being said in July, 1977 at the trial. With these initial observations I shall go on considering what case is made out before me in the arguments advanced on behalf of Vishnu Phadke. Advocate A. Lobo submitted for him that on 13-7-74 the workman and Cardoz did go to the godown with the keys and with the head load on the head of Swamy, Phadke took him to the shop of Barad and delivered them. All this happened during lunch hours. According to him these are simple facts and the workman who was a radio mechanic did do this because of the incentive declared by the shop if the sales exceed Rs. 40000/- per year. According to him Phadke who had put up 16 years of service was a trusted employee. Hence even if he removed the goods without a challan there is nothing wrong in it. According to him the workman had the authority to take out the goods even in the absence of regular 'In charge'. For this reason the workmen could take out the keys of the godown from the drawer without anybody's permission. By way of analogy he states that

workman could open the shop and what is wrong if he opens the godown also. According to him if the order of Barad was not complied with the workman would have got a memo. This is the sum and substance of the argument advanced by Shri Lobo on behalf of the workman.

I find that even accepting the argument for its face value there are series of infirmities which I can consider one after the other.

A) Workmen delivered the two cartons during lunch hours when others including the incharge A. Silva had gone for lunch. He took the keys from the drawer without any body's knowledge much less A. Silva's. Throughout that day he did not inform anybody about the delivery. Instead, he went to Sawantwadi on the very day. Whether this conduct is consistent with his innocence? When we are to consider the Modus-Operandi. This sudden departure of Vishnu Phadke from the Head Quarters assumes significance.

Reciprocally, his counter part in the joint-action Surendra Barad took the delivery of the two cases clandestinely, closed the shop and he too similarly left the Head Quarter to go for a business call to Bombay, this business urge was so heavy in that week that after spending four days for Bombay trip he took another trip to Belgaum to spend two days there to be available at Margao on Sunday next. This innocent person then came to know that his trusted person came under spiteful harrassment by the management simply because it came to know about the 'delivery' from some other source. According to him the whole episode was a simple business deal and he offered to meet the management on or after 27-4-1974. I have discussed these facts as they emerged upto the stage of domestic inquiry conducted by Shri Rao on 26-4-1974. We need not consider the report on the findings recorded by Shri Rao, because the employer does not rely on the same. However all these statements made by all concerned assume particular significance, they being the immediate statements of all concerned and there was no scope for embellishment. There are glaring improvements in the evidence recorded three years thereafter in July, 1977. Before considering the contradictions and improvements I shall first discuss the basic norms for a delivery of goods, in the instant case the goods to be delivered being electrical goods such as Tube-lights and bulbs.

A) It is in common knowledge that such goods are tested before hand before they are sold to the customer. This is done to obviate possible complaints in future that some of them were fused.

B) This is a delivery in the nature of sale. Admittedly Barad received the two cases during lunch hours but no cash payment was made. Hence this was a sale on credit. In that case a credit memo was a clear necessity on all counts.

C) The delivery is made by Vishnu Phadke whose exclusive job in the shop was that of a radio mechanic.

D) The keys of the godown were usually kept in a drawer and all those working in the shop knew it. It is on record that there was sufficient stock of tube-lights and bulbs in the shop if Barad's requirement was really that urgent?

E) When was the necessity for Vishnu Phadke a radio mechanic to take the keys from the drawer and that too during lunch hours and remove the two cases with the help of the coolie and then to deliver them secretly to Barad? His explanation is that he did this with a view to get incentive. This theory falls flats on two counts, firstly because the incentive is given on cash transactions and secondly the employer was not immediately informed about the so called sale if getting incentive was the real motive in this exercise? Further it is on record that the dues or account of the two cases are still outstanding with Barad and nobody has

cared to settle that accounts. All this goes to show that the story about incentive is an after thought and the same is a myth.

With this I shall now advert to the oral and documentary evidence recorded in this case; Exactly three years after the episode. I find that there are improvements, galore and these improvements amount to material contradictions. The glaring improvement is regarding the placement of the order. Till 27th July 74, it was a case of oral order placed with Cardoza a couple of days before 13-7-74. However in the trial before this court a story of written order termed and styled by Surendra Barad as indent is introduced. In his evidence recorded on 1-7-77. Vishnu states that he placed the order with some employee of Party II whose name he did not remember. However he produced the written order which he says as indent which is at Exb. W-5. According to him after the placement of this order, Vishnu Phadke came for confirmation and then he supplied the goods, delivery of which was taken by him. The written order Exb. W-5 is a remarkable piece of evidence. It is not the original but it is a photostat copy. No body knows where the original is and why it is not forthcoming. This so called order is dated 13-7-74, the very day on which he took the delivery. Much comment is not needed on this. Suffice it to note that this witness is a co-conspirator and is hand-in-glove with Vishnu Phadke. I am inclined to make these observations, in view of the open and convenient lies told by him in his evidence again recorded on 22-10-82. He then states that he does not remember Antonio Cardozo but he remembered Vishnu Phadke and then tries to prove the written order Exb. W-5 allegedly placed with him. In his Cross Examination, he admits that whenever so quote were supplied by C.M.M. (Party II) they used to be accompanied by delivery challans. He does not remember whether the goods supplied under Exb W-5(c) were accompanied by a delivery challan or not. This is the height of things because it is common ground that not only there was no challan but there was no credit memo as well. He is then questioned about accounts kept by him. He says that he used to note such payments in a diary or on a piece of paper. He wants us to believe that whenever payment was made, he used to tear off such notes. About the value of the goods purchased under Exb W-5(a) he says that he had mentioned the same in his diary. He was however unable to produce the diary due to lapse of time. When asked to produce the stock book for 1974, he said it was not available on adjourned date he produced statement of Account for 1974. (Exb. W-12) and when confronted with it he meekly admitted that he had not kept the records regarding the purchase of items for which payment was made at that time.

A careful study of his evidence shows that the same is full of lies and contradictions and the witness had no regard for truth. Such is the position about the person to whom Vishnu Phadke had supplied the two cases of electrical goods clandestinely. Firstly Vishnu Phadke who was just a radio mechanic had no business to supply goods by removing them incognito from the godown and supplying them without a challan. As observed by me earlier, this was an attempt to smuggle goods and the attempt would have been probably successful had not, Antonio Cruz seen him carrying the goods with the help of a coolie and delivering them into the shop of Barad. Hence this is a case of unauthorised removal of valuable goods from the godown without the knowledge of employer. In criminal parlance this may amount to theft from a house, cheating or criminal breach of trust. Fortunately for both Vishnu Phadke and Barad no criminal prosecution is launched against them and the employer just stopped by first issuing order of suspension giving charge-sheet, holding inquiry by

appointing an inquiry officer and then relieving the workmen from service after getting the finding of the inquiry officer.

In the service-industry parlance the action of Vishnu Phadke amounts to gross misconduct and misappropriation of the property of the employer. Be it noted here that the value of the goods so delivered has still remained unpaid. And for such lapses, what the workmen is awarded is the penalty of removal from service without any other deductions from salary. The question is whether such an employer should be directed to be re-instated in service? In that case it may amount to giving premium over dishonesty. Ordinarily, I would have refrained myself from passing such remarks because it is always expected that the courts should pass remarks with restraints, howsoever provocative the conduct of a party might be. This is a cardinal principal of Judicial coolness and I am fully aware of it. However I have drawn the conclusions after carefully scanning the evidence on record and that too after shifting the grain from the chaff.

No case law is cited on behalf of the workman. However many cases are cited on behalf of the employer and I shall discuss a few of them. In 1972 LAB. I. C. P. 1262 (VS 255) the Supreme Court has observed that Tribunal has power to decide whether order of termination is colourable exercise of power by the employer. In that case even though the standing order of the company did not envisage termination of service when the employer lost trust and confidence in the workman, that was regarded as inconsequential. His Lordship Vaidalingam J. K. has expressed this view by relying on earlier Supreme Court cases reported in A. I. R. 1960 Supreme Court page 1960 and A. I. R. 1966 Supreme Court page 1672.

In the case reported in 1975 Vol II page 367 the Supreme Court has held that quantum of punishment is entirely for management to decide. Both the above cases do apply to the facts of the present case. It follows that when there is loss of confidence, the management can terminate the services and the tribunal need not interfere with the same unless there are glaring instances of injustice.

There are many other cases cited before me. I do not think it necessary to study other legal principals as this is a straight case of loss of confidence on account of misdeed during the course of the employment by two workmen. The peon Antonio Cardozo probably was wise enough to read the writing on the wall and he meekly submitted to the destiny by keeping himself away from the inquiry. About Vishnu Phadke the case on evidence is so strong against him that his advocate could not properly show how and why the order of the termination is unjust and illegal. Upon a careful consideration of the facts and evidence on record and the position in law. I find that the order of termination of both the workman does not call for any interference. In the result, I answer the Government reference as under:

ORDER

It is hereby held that the action of the Management of M/s. Cosme Matias Menezes Pvt. Ltd. Panaji Goa in terminating the services of Vishnu B. Phadke Radio Mechanic and Antonio Cardozo, peon with effect from 5-8-1974 is just and legal and the same does not call for any interference at the hands of this Tribunal.

Consequently neither of the workmen is entitled to any relief in this matter.

Inform the Government about the decision on the reference.

There shall be no order as to costs.

Sd/-
(S. V. NEVAGI)
Presiding Officer
Industrial Tribunal

Government of Goa, Daman and Diu Order, dated 30th July, 1987
No. 28/16/87-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.
Subhash V. Elekar, Under Secretary (Labour).

Panaji, 18th September, 1989.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Ref. No. IT/51/87

Shri Ronati Gurruvaya — Party I/Workman
V/s

The President/Chief Officer, Bicholim Municipal Council. — Party II/Employer.

Panaji. Dated: 28-8-1989

AWARD

This a reference made by the Government of Goa, by its order No. 28/16/87-ILD dated 30th July, 1987 with an annexure scheduled thereto which reads as follows:

"Whether the action of the Bicholim Municipal Council in denying promotion to Shri Ronati Gurruvaya, Peon to the post of Driver is legal and justified.

If not, to what relief the workman is entitled to?"

As seen from the above Government reference the point involved is regarding the denial of a post of a driver to the workman. Now, the parties have settled the matter and the settlement Exh. 9 recorded before me covers this point. Hence I am passing the following award in terms of the settlement.

ORDER

The action of the Bicholim Municipal Council in denying promotion to the Peon Ronati Gurruvaya to the post is held to be not just and proper, in view of the post of Driver being given to him from 1-5-87. The workman shall be entitled to the salary in the scale of a driver from 1-5-87 onwards and the Municipal Council shall work out the arrears as per the scale and pay the same to the Party I/Workman.

There shall be no order as to costs or the amount of interest on the arrears of salary paid to the workman.

Inform the Government accordingly.

S. V. Nevagi
Presiding Officer
Industrial Tribunal